THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.5158 of 1998
Date: 11-06-2007

Between:
C.Papaiah

Petitioner

And

The Managing Director, Cooperative Electricity
Supply Society Limited, Sircilla, Karimnagar District.

Respondent

THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.5158 of 1998

ORDER:

1. The present writ petition has been instituted questioning the correctness or validity of the orders passed on 15-10-1997 by the Managing Director, Cooperative Electricity Supply Society Limited, Sircilla, Karimnagar.

2. The writ petitioner was working at the relevant point of time with the respondent organization as an Assistant Lineman. He was involved in an accident at the work place on 5th September,1992 wherein he had received extensive damage and injuries to his body. After initially treating him at Sircilla, he was referred to the Government Hospital at Karimnagar, which in turn referred him for better treatment to the Appollo Hospital at Hyderabad where he had undergone treatment from 09-09-1992 to 16-09-1992. Subsequently he had been examined by the Professor and Head of the Department of Orthopedics, Osmania Hospital, Hyderabad on 30-09-1992 and the Doctor had opined that due to the fractures suffered by him he had suffered disability and he assessed the extent of disability to be 50%. On that basis, the petitioner had been recommended for sanction of conveyance allowance. Based upon this opinion of the Professor and Head of the Department of the Orthopedics, Osmania General Hospital, an order was passed on 14th August,1996 sanctioning payment of conveyance allowance at the rate of 10% of the basic pay subject to the ceiling prescribed in terms of

the rules. The writ petitioner had accordingly been paid the conveyance allowance for attending to his work due to the disability suffered by him. But however, subsequent thereto he was again referred to the Medical Board for examination, which certified that the petitioner does not have any appreciable amount of neurological and physical disability. Based upon this report of the Medical Board which was furnished to the respondent on 17-02-1997, the Managing Director of the respondent passed orders on 15-10-1997 cancelling the conveyance allowance sanctioned in favour of the writ petitioner earlier and he had also ordered to recover the allowance which was already paid. It is this order dated 15-10-1997 passed by the respondent, which has been challenged in this writ petition.

3. Heard Sri D.Linga Rao, the learned counsel for the petitioner and Sri P.V.Srinivasa Rao, learned counsel for the respondent.

4. It is not in dispute that the writ petitioner had suffered certain injuries in an accident that had occasioned at the work place. It is also not in dispute that a competent Orthopedic Surgeon at the Osmania General Hospital had assessed, in the immediate aftermath of the accident, the extent of disability suffered by the writ petitioner to be of the order of 50%. On that basis, the case of the writ petitioner was recommended for sanction of the conveyance allowance which was duly accepted and conveyance allowance has been sanctioned to the writ petitioner. Some of the disabilities sustained due to the accidents, in particular, Orthopedic injuries, show progress with the passage of time, treatment and physio therapy undertaken etc. Consequently, there are innumerical instances where the victims gained substantial improvement and recovery from out of extensive damages suffered by them from the bodily injuries. Thus, the Medical Board which examined the writ petitioner in the

year 1997 perhaps had assessed the disability suffered by the petitioner and subsisting as at that time to be not so substantial as was assessed in the immediate aftermath of accident that occasioned on 5th September,1992. This finding of the expert Medical Body that the petitioner had recovered substantially from out of his injuries, is obviously a value based decision upon appreciation of the condition of the writ petitioner at that point of time. Such an opinion cannot be doubted in normal circumstances by courts and all the more so in the absence of any other acceptable evidence from any other expert body or institute to the contra. Therefore, I do not find any infirmity or illegality in the respondent subjecting the writ petitioner for yet another round of examination by the Medical Board and calling for it's opinion in February,1997. Consequently, there is also nothing wrong in the respondent passing the order on 15th October,1997 cancelling or withdrawing the conveyance allowance which was sanctioned earlier in favour of the writ petitioner, inasmuch as the percentage of disability of the writ petitioner if is reduced to less than 40%, he will not be entitled to be sanctioned any special allowances like conveyance allowance.

5. In fact, as per Section 2 (t) of Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995, 'person with disability' means a person suffering from not less than 40% of any disability as certified by a medical authority. Therefore, if the disability suffered and subsisting as of February,1997 by the writ petitioner falls in extent to less than 40%, he will not be entitled to be paid any special allowances like the conveyance allowance. Thus, to the extent of withdrawing the conveyance allowance based upon the fresh input namely the opinion rendered by the Medical Board in February, 1997 *perse* may not

be irregular or illegal. But however, the respondent is not justified in any manner in proposing to recover the amount of conveyance allowance already paid by them to the writ petitioner till 15th October,1997. To this extent, the impugned order is not liable to be sustained. Therefore, the order passed by the Managing Director of the respondent on 15-10-1997 proposing to recover the conveyance allowance already paid to the petitioner is clearly irregular and illegal. Particularly when the Managing Director had not put the writ petitioner on notice prior to passing the impugned order, he could not have passed such an adverse order in violation of the principles of natural justice. Both for substantial reasons as well as for violation of principles of natural justice, that portion of the impugned order which proposes to effect recovery of the conveyance allowance already paid to the writ petitioner cannot be sustained and it is accordingly quashed.

5. To the extent above, the writ petition is allowed but however without costs.

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NOOTY RAMAMOHANA RAO,J

11-06-2007
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